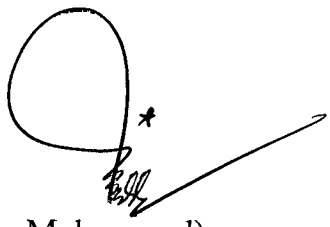


21.07.2022

Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Zafrullah, Superintendent for respondents present.

Representative of the respondents submitted copy of the agenda for meeting of departmental promotion committee held on 19.07.2022 at 1400 hours and requested that implementation of the Service Tribunal judgement dated 15.04.2022 is under process and report will be submit^{ted} on the next date. Copy of the same is handed over to learned counsel for the petitioner. Adjourned. To come up for implementation report on 10.10.2022 before S.B.

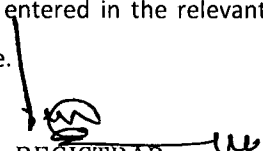




(Mian Muhammad)
Member (E)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 334/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.06.2022	<p>The execution petition of Mr. Javed Ullah Khan submitted today by Mr. Amin-ur-Rehman Yousafzai Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	14-6-2022	<p>This execution petition be put up before Single Bench at Peshawar on <u>21-06-2022</u>. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	21.06.2022	<p>Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.</p> <p>Implementation report not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of implementation report on the next date. Adjourned. To come up implementation report on 21.07.2022 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member (E)</p>

BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

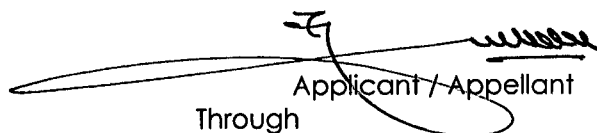
Exception Petition no. 334/2022

Misc. Application No. _____ of 2022
IN
Service Appeal No. 7662 / 2021

Javed Ullah Khan **VERSUS** Government of KP & 2 others

I N D E X

S.No.	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Application with affidavit		1
2.	Copy of Judgment dated: 15.04.2022 alongwith mem of Service Appeal No.7662 / 2021	A	2-28
3.	Copy of office letter dated: 29.04.2022 of the worthy Registrar of this Hon'ble Tribunal	B	29
4.	Wakalatnama		30


Applicant / Appellant
Through


Amin ur Rehman Yusufzai

Sajjad Ahmad Mehsud


Khalid Khan Mohmand

&


Abdul Samad Khan
Advocates, Peshawar

Dated: 06.06.2022

1

BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Execution petition no. 334/2022

Misc. Application No. _____ of 2022
IN
Service Appeal No. 7662 / 2021

Javed Ullah Khan **VERSUS** Government of KP & 2 others

APPLICATION U/S 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT, 1974 (KP ACT NO.1 OF 1974), READ WITH ALL ENABLING PROVISIONS OF LAW GOVERNING THE SUBJECT, FOR EXECUTION/IMPLEMENTATION OF JUDGMENT DATED: 15.04.2022 IN THE TITLED APPEAL.

Diary No. 200

Dated 7-6-2022

Respectfully Sheweth:

1. That Applicant/Appellant approached this Hon'ble Tribunal through Service Appeal No.7662/2021, which was allowed, vide Judgment dated: 15.04.2022. **(Copy of Judgment dated: 15.04.2022 alongwith Service Appeal No.7662/2021 is attached as Annexure "A")**.
2. That Judgment dated: 15.04.2022 supra was announced by this Hon'ble Tribunal in open court, in presence of the representatives of the Respondent Department, however, the same has not been implemented so far, although the worthy Registrar of this Hon'ble Tribunal has also communicated the Judgment ibid through letter No.981/ST, dated: 29.04.2022, received by PS/Secretary Irrigation, on the same day i.e. 29.04.2022, however to no avail so far, hence the instant application. **(Copy of office letter dated: 29.04.2022 of the worth Registrar of this Hon'ble Tribunal is attached as Annexure "B")**.
3. That the stipulated time one month, mentioned in the Judgment dated: 15.04.2022 supra, has been elapsed, however, Respondent Department is reluctant to implement the Judgment ibid in letter and spirit, which has caused grave miscarriage of justice, moreover, this Hon'ble Tribunal has got ample jurisdiction to implement the Judgment ibid, by issuing appropriate directions to the delinquents for the desired relief.
4. That any other ground with the permission of this Hon'ble Tribunal will be taken at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of instant application/petition, Judgment dated: 15.04.2022 of this Hon'ble Tribunal may be ordered to be implemented in letter and spirit, so as to secure the ends of justice and equity.

[Signature]
Applicant / Appellant
Through

AFFIDAVIT

Stated on oath that contents of instant **Application** are true and correct to the best of knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

[Signature]
Deponent
0333-9746161

Amin ur Rehman Yusufzai

Sajjad Ahmad Mehsud

Khalid Khan Mohmand

Abdul Samad Khan
Advocates, Peshawar

Dated: 06.06.2022



Annex "B" (g)

Khyber P. Service Tr.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

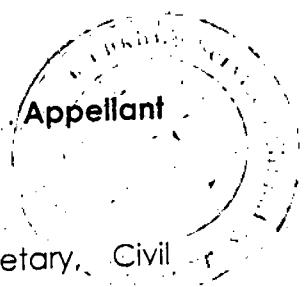
Discy No. 7753

S. Appeal No: 7662/2021

Date: 18/10/2021

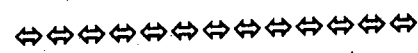
Service Appeal No. /2021

Javed Ullah Khan S/O Asad Malook Khan
Assistant Engineer (OPS) Irrigation & Hydel Power Sub Division,
Jamrud & Landi Kotal, District Khyber.



....VERSUS....

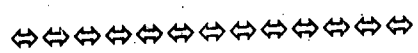
1. Government of Khyber Pakhtunkhwa through its Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat Peshawar.
3. Chief Engineer (South) Irrigation Department, Warsak Road, Khyber Pakhtunkhwa Peshawar. Respondents



SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974, READ WITH ALL ENABLING PROVISIONS OF LAW, GOVERNING THE SUBJECT, AGAINST THE DECISION / RECOMMENDATION OF THE DEPARTMENTAL PROMOTION COMMITTEE, IN ITS MEETING HELD ON 23.06.2021, REGARDING AGENDA ITEM NO.III, ON BASIS WHEREOF, CASE OF PROMOTION OF APPELLANT AS ASSISTANT ENGINEER/SUB DIVISIONAL OFFICER (BS-17) WAS DEFERRED.

PRAYER-IN-APPEAL:

On acceptance of instant appeal, impugned decision/recommendation of the Departmental Promotion Committee, in its meeting held on 23.06.2021, regarding Agenda Item No.III, vide which case of promotion of appellant as Assistant Engineer/Sub Divisional Officer (BS-17) was deferred, alongwith subsequent proceedings thereto, may be declared as illegal, unlawful, without lawful authority, void ab-initio and of no legal effect, hence be set at naught and Respondent Department may further be directed to promote him to the rank of Assistant Engineer/Sub Divisional Officer (BS-17) from the date of eligibility with all consequential benefits.



Respectfully Sheweth:

That appellant is law abiding peaceful citizen of Pakistan and permanent resident of Bannu. He passed examinations of:
i. Diploma in Associate Engineer (DAE), in the year 2004, (60.92%), from Government College of Technology, Bannu.
ii. B.Sc. (Civil Engineering), in the year 2017 (81%), from Iqra National University, Peshawar.

(Copy of detailed CV is attached as Annexure "A").

2. That appellant, being qualified, was appointed as Sub Engineer (BPS-11), in Respondent Department, by the Competent Authority, vide Office Order No.6150-57/IBA/3-E, dated: 19.10.2010, on the recommendations dated: 13.10.2010 of the Khyber Pakhtunkhwa Public Service Commission.
(Copies of offer of appointment dated: 19.10.2010 & recommendations dated: 13.10.2010 of the Khyber Pakhtunkhwa Public Service Commission, are attached as Annexures "B" & "C" respectively).

ATTESTED

Yusufzal Law Chamber

10/10/21
w,
Registrar

15th April, 2022

Counsel for the appellant and Mr. Muhammad Riaz Khan Paindakhel, Asstt. A.G for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today, connected 25 pages, in connected Service Appeal No. 7659/2021 titled, "Shahid Ali Khan Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others, we allow this appeal and direct the respondents to consider the appellant for promotion against the vacant post. The DPC shall be held at the earliest possible, but not later than a month of receipt this judgment. Copies of this judgment be placed on all the connected appeal files. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th day of April, 2022.*



(KALIM ARSHAD KHAN)
Chairman

(ROZINA REHMAN)
Member (J)

Date of receipt of appeal *06/06/22*
 Number of copies *800*
 Date of filing *10/6*
 Date of hearing *10/6*
 Date of judgment *07/06/22*
 Date of delivery of copies *07/06/22*

Service Appeal No. 7659/2021 titled "Shahid Ali Khan vs. Government of KP & others", Service Appeal No. 7660/2021 filed "Rizwan versus Government of KP & others", Service Appeal No. 7661/2021 titled "Wajahat Hussain versus Government of KP & others", Service Appeal No. 7662/2020 titled "Javedullah versus Government & others", and Service Appeal No. 7663/2020 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: KALIM ARSHAD KHAN, CHAIRMAN
ROZINA REHMAN, MEMBER(J)

Service Appeal No. 7659/2021

Shahid Ali Khan (Sub Divisional Officer, Shahbaz Garhi Irrigation Subdivision, District Mardan) son of Jehan Safdar.....(**Appellant**)

Versus

1. **Government** of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat, Peshawar.
3. **Chief Engineer (South)**, Irrigation Department, Warsak Road, Khyber Pakhtunkhwa, Peshawar.....(**Respondents**)

Present:

Mr. Amin ur Rehman Yousafzai, Advocate...For appellant.

Mr. Muhammad Riaz Khan Pinda Khel,
Assistant Advocate GeneralFor respondents.

Date of Institution.....18.10.2021
Date of Hearing.....14.04.2022
Date of Decision.....15.04.2022

2. Service Appeal No. 7660/2021

Rizwanullah (Sub Divisional Officer, Flood Irrigation Subdivision No. II, District DI Khan) son of Abdul Rehman.....(**Appellant**)

Versus

1. **Government** of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat, Peshawar.
3. **Chief Engineer (South)**, Irrigation Department, Warsak Road, Khyber Pakhtunkhwa, Peshawar.....(**Respondents**)

Present:

Mr. Amin ur Rehman Yousafzai, Advocate...For appellant.

Mr. Muhammad Riaz Khan Pinda Khel,
Assistant Advocate GeneralFor respondents.

Date of Institution.....18.10.2021
Date of Hearing.....14.04.2022
Date of Decision.....15.04.2022

(4)

Service Appeal No.7659/2021 titled "Shahid Ali Khan vs. Government of KP & others", Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others", Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others", Service Appeal No.7662/2021 titled "Javedullah versus Government & others", and Service Appeal No.7663/2021 titled "Inamillah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



3. Service Appeal No.7661/2021

Wajahat Hussain(Sub Divisional Officer, Irrigation and Hydel Power Subdivision, Orakzai) son of Malik ur Rehman... (*Appellant*)

Versus

1. **Government** of KhyberPakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat, Peshawar.
3. **Chief Engineer (South)**, Irrigation Department, Warsak Road, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. Amin ur Rehman Yousafzai, Advocate...For appellant.

Mr. Muhammad Riaz Khan Painda Khel,
Assistant Advocate GeneralFor respondents.

Date of Institution.....18.10.2021
Date of Hearing.....14.04.2022
Date of Decision..... 15.04.2022

4. Service Appeal No.7662/2021

Javedullah(Assistant Engineer OPS, Irrigation and Hydel Power Subdivision, Jamrud and Landi Kotal, District Khyber) son of Asad Malook Khan..... (*Appellant*)

Versus

1. **Government** of KhyberPakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat, Peshawar.
3. **Chief Engineer (South)**, Irrigation Department, Warsak Road, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

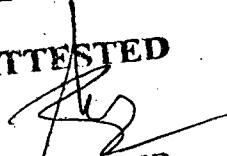
Present:

Mr. Amin ur Rehman Yousafzai, Advocate...For appellant.

Mr. Muhammad Riaz Khan Painda Khel,
Assistant Advocate GeneralFor respondents.

Date of Institution.....18.10.2021
Date of Hearing.....14.04.2022
Date of Decision..... 15.04.2022

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

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Service Appeal No.7659/2021 titled "Shahid Ali Khan..vs.. Government of KP & others", Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others", Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others", "Service Appeal No.7662/20201 titled "Javedullah versus Government & others", and Service Appeal No.7663/20201 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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5. Service Appeal No.7663/2021

Inamullah(Sub Divisional Officer, Irrigation Subdivision, Tehsil Shangla District Swat) son of Purdil Khan..... (*Appellant*)

Versus

1. **Government** of KhyberPakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. **Secretary** to Government of Khyber Pakhtunkhwa Irrigation Department, Civil Secretariat, Peshawar.
3. **Chief Engineer (South)**, Irrigation Department, Warsak Road, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. Amin ur Rehman Yousafzai, Advocate...For appellant.

Mr. Muhammad Riaz Khan Painda Khel,
Assistant Advocate GeneralFor respondents.

Date of Institution.....18.10.2021
Date of Hearing.....14.04.2022
Date of Decision..... 15.04.2022

APPEALS UNDER SECTION 4 OF THE, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE DECISION/RECOMMENDATION OF THE DEPARTMENTAL PROMOTION COMMITTEE, IN ITS MEETING DATED 23.06.2021, REGARDING AGENDA ITEM NO.III, ON THE BASIS OF WHEREOF, CASE OF PROMOTION OF THE APPELLANTS OF ALL THE APPEALS AS ASSISTANT ENGINEER/SUB-DIVISIONAL OFFICERS (BS-17) WAS DEFERRED

CONSOLIDATED JUDGEMENT

KALIM ARSHAD KHAN CHAIRMAN. Through this

single Judgment the instantService Appeal No.7659/2021 titled

"Shahid Ali Khan vs Government of KP & others", Service Appeal

No.7660/2021 titled "Rizwan versus Government of KP & others",

Service Appeal No.7661/2021. titled "Wajahat Hussain versus

15/4/22
ACCEPTED
Khyber Pakhtunkhwa
Service Tribunal
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Service Appeal No.7659/2021 titled "Shahid Ali Khan vs. Government of KP & others", Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others", Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others", Service Appeal No.7662/20201 titled "Javedullah versus Government & others", and Service Appeal No.7663/20201 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

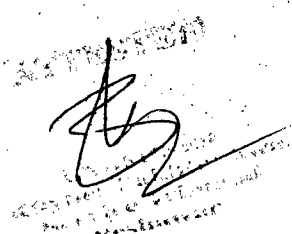
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Government of KP & others, "Service Appeal No.7662/20201 titled "Javedullah versus Government & others" and Service Appeal No.7663/20201 titled "Inamullah and Government of KP & others" are decided because all are similar in nature and outcome of the same decision.

2. Facts, surrounding the appeals, are that the appellants were serving as Sub-Engineers in BPS-11 (upgraded to BPS-16 on 07.03.2018) in the Irrigation Department; that they passed departmental examination Grade-A & Grade-B and became eligible for promotion to the post of Assistant Engineer (BS-17), as per the rules in vogue; that the respondents initiated the cases of the appellants along with others for promotion and prepared working paper, alongwith panel of eligible Graduate Sub engineers, for consideration against 12% quota reserved for the holders of BSc Engineering Degree; that synopses of the appellants were placed before the Departmental Promotion Committee (DPC), in its meeting held on 23.06.2021, under Agenda Item No.III, but the appellants were not recommended for promotion rather the Agenda Item No.III was deferred on the pretext to seek guidance from the Establishment Department, on the following:

15/4/22

i. As per amended service rules of Irrigation Department notified on 25.06.2012, twelve posts of Assistant Engineer (BS-17) come under 12% share quota of Graduate Sub Engineers along with passing of departmental grade B and A examination against which



Service Appeal No.7659/2021 titled "Shahid Ali Khan, vs. Government of KP & others", Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others", Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others", Service Appeal No.7662/20201 titled "Javedullah versus Government & others", and Service Appeal No.7663/20201 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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six officers are working on regular basis while seven officers, included in the panel at serial No.1 to 6 & 9 are working as Assistant Engineer (BS-17) on acting charge basis since 2011.

ii. Before 25.06.2012 the passing of grade B&A examination was not mandatory for promotion to the post of Assistant Engineer and the above mentioned seven Graduate Sub Engineers were appointed to the post of Assistant Engineer (BS-17) on acting charge basis in 2011.

iii. The departmental B&A examination is conducted after every two years. The last examination was held in 2020 and the next will be held in 2022. The officers of panel at serial No.1 to 6 & 9 (except No.4 B&A passed) have passed their mandatory grade B examination and will appear in the A examination in 2022.

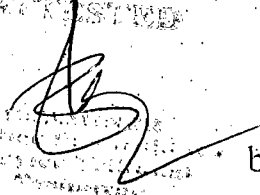
15/4/22

3. The DPC in paragraph 8 of the minutes sought advice of the establishment through a separate letter that:

a. As to whether the amended rules notified on 25.06.2012 are applicable to the above employees who were appointed in the year 2011 on acting charge basis or the present Service Recruitment rules will be applicable in the instant case.

b. If the present service rules are applicable upon the officers appointed on acting charge basis then before

RECEIVED



Service Appeal No.7659/2021 titled "Shahid Ali Khan. vs. Government of KP & others", Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others", Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others", Service Appeal No.7662/2020 titled "Javedullah versus Government & others", and Service Appeal No.7663/2020 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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completion of mandatory examination of these officers, the officers junior to them can be promoted to the post of Assistant Engineer on regular basis or otherwise.

4. It was then all the appellants preferred departmental appeals on 13.07.2021 to Respondent No.1 against the decision dated 23.06.2021 of the DPC, which, according to them was not responded within statutory period, compelling them to file these appeals.
5. It was mainly urged in the grounds of all the appeals that the appellants had been deprived of their right of promotion without any deficiency; that the department had no right to keep the promotion case pending for indefinite period; that the appellants were not treated in accordance with law; that the DPC departed from the normal course of law, which was malafide on their part; that the appellants were deferred for no plausible reasons.
6. On receipt of the appeals and their admission to full hearing, the respondents were directed to file reply/comments, which they did.
7. In the replies it was admitted that the appellants had passed Grade B&A examinations and had also completed 5 years' service for promotion as Assistant Engineer subject to considering their eligibility by the DPC and availability of posts as per service rules; that the agenda item for promotion was dropped due to non-availability of vacancies under 12% quota for promotion of Graduate Sub Engineers to the rank of Assistant Engineers BS-17

15/4/22



ATTESTED

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Service Appeal No.7659/2021 titled "Shahid Ali Khan, vs. Government of KP & others", Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others", Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others", Service Appeal No.7662/2020 titled "Javedullah versus Government & others", and Service Appeal No.7663/2020 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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(i.e. 6 Nos Sub Engineers are working on regular basis while 7 Nos Sub Engineers are working on Acting Charge basis against 12 posts in the share quota of Graduate Sub Engineers which already exceeds by one number).

8. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents and have also gone through the record.
9. Learned counsel for the appellants reiterated the facts and grounds detailed in the appeal and referred to above and submitted that the appellants had a genuine case to be considered for promotion and they had legitimate expectancy for the same. He prayed for acceptance of the appeals.
10. On the contrary the learned Assistant Advocate General opposed the arguments advanced by the learned counsel for the appellants and supported the stance taken by the respondents.
11. There is no dispute that the working paper, for promotion from the post of Sub Divisional Officers (BPS-16) to the post of Assistant Engineer (BPS-17), was prepared on proforma-I, wherein the details of the posts were given. According to the working paper six posts were shown vacant for making promotion under 12% Graduate quota. Along with the working paper, a panel of Graduate Engineers for consideration was also annexed on proforma-II (Annexure-J). The officers at serial number 1 to 3, 5 to 7, 9, 12 to 14 were shown in the panel to be not eligible while the appellants' names figure at serial No.8, 10, 11, 13 and 15 of the panel. The panel bears

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ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

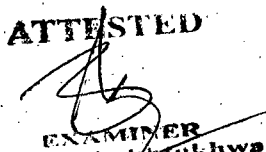
Service Appeal No.7659/2021 titled "Shahid Ali Khan, vs. Government of KP & others". Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others". Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others". Service Appeal No.7662/2021 titled "Javedullah versus Government & others", and Service Appeal No 7663/2021 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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signature of the Additional Secretary, Irrigation Department, at the end of list and the appellants were shown in the working paper to be eligible for promotion. Similarly, the officer at serial No.4 named Bakhtiar was also shown to be eligible for promotion. The DPC held on 23.06.2021 recorded the minutes of the proceeding, which have been detailed in the preceding paragraphs and sought clarification from the Establishment Department vide letter No.SO(E)/Irr/4-3/DPC/2019/Vol-IX dated 04.10.2021, which was responded by the Establishment Department vide letter No.SOR-V(E&AD)/7-1/Irrig: dated 23.11.2021, instead seeking the clarification from the Secretary, Government of Khyber Pakhtunkhwa, Irrigation Department on the following observations:

- i. Why the employees were appointed on acting charge basis under APT Rules, 1989?
- ii. Why the matter remained linger on for more than ten years?
- iii. For how many times the departmental B&A exams for these employees in the intervening period were arranged by the Administrative Department and whether they appeared, availed opportunity of appearing the examination or deliberately avoid the opportunity of appearing in the subject examination or failed these examination?

15/11/21

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
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Peshawar

12. Additional documents were placed during the pendency of the appeals, whereby working paper was prepared for considering one

Service Appeal No.7659/2021 titled "Shahid Ali Khan..vs..Government of KP & others", Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others", Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others", Service Appeal No.7662/20201 titled "Javedullah versus Government & others", and Service Appeal No.7663/20201 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

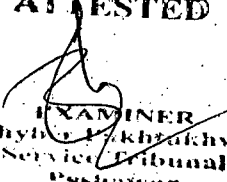
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Mr. Bakhtiar (at serial No.4 of the panel for consideration, wherein the names of the appellants also figured) for promotion, who was also deferred with the appellants. The DPC was stated to be held on 13.01.2022 and vide Notification No.SO(E)/IRRI:/4-3/DPC/2019/Vol-IX: dated 28.03.2022, Mr. Bakhtiar was promoted.

13. At this juncture it seems necessary to observe regarding the above referred advice sought by the DPC. As regards first query, whether the amended rules notified on 25.06.2012 were applicable to the employees who were appointed in the year 2011 on acting charge basis or the present Service Recruitment rules will be applicable in the instant case, it is observed that the administrative rules cannot be given retrospective effect. As regards the second query whether the junior officers could be promoted when the seniors already appointed on acting charge basis could not qualify either of departmental B&A examinations, it is in this respect found that the basic qualification for eligibility to be considered for promotion to the post of Assistant Engineer (BPS-17), is passing of departmental B&A examinations and when the seniors could not get through the both or any of them, they are not eligible and obviously next in the line were to be considered.

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14. As to the observation of the Establishment Department:-

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- (i) Why the employees were appointed on acting charge basis under the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989?

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- (ii) Why the matter remained linger on for more than ten years?
- (iii) For how many times the departmental B&A examinations for these employees in the intervening period were arranged by the Administrative Department and whether they appeared, availed opportunity of appearing in the examination or deliberately avoided the opportunity of appearing in the examination or deliberately avoided the opportunity of appearing in the subject examination or failed these examination,

it is observed that no reply of the Administrative Department in this respect is found placed on the record. Whereas without replying the queries the Administrative Department promoted one Bakhtiar, referred to above.

15. There seems lot of conflict in the working paper and minutes of the meeting of the DPC held on 23.06.2021 and that of the replies submitted by the respondents. In the working paper and the minutes six posts were shown vacant for filling, of which the DPC was convened and lengthy exercise of preparation of working paper, panel of officers for consideration and holding of DPC was undertaken, whereas in the replies the respondents took a U-turn and contended that the posts were not vacant. If the posts were not vacant then why the lengthy exercise of preparing working paper, panel of officers and above all holding of DPC was done? This is a question which could not have been answered by the respondents in their replies or for that matter during the course of arguments. It was

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the stance of the respondents in the replies that the Agenda Item No.III was dropped due to non-availability of vacancies under 12% quota for promotion of Graduate Sub Engineers to the rank of Assistant Engineers BS-17 (i.e. 6 Nos. Sub Engineers are working on regular basis while 7 Nos. Sub Engineers are working on Acting Charge basis against 12 posts in the share quota of Graduate Sub Engineers which already exceeds by one number). This stance is in clear negation to the working paper, panel list of the officers and minutes of the DPC wherein these 6 posts are shown vacant and were intended to be filled in by promotion. So far as contention of the respondents that the seats were occupied by the officers on acting charge basis, so those were not vacant, it is observed in this regard that rule9 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 (*the Rules*) is quite clear and is reproduced below for facile reference: -

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"9. Appointment on Acting Charge or current Charge Basis. (1) Where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service the authority may appoint him to that post on acting charge basis:

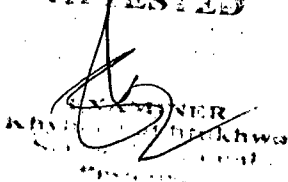
Provided that no such appointment shall be made, if the prescribed length of service is short by more than [three years].

[(2)]. Sub rule (2) of rule-9 deleted vide by Notification No. SOR-VI(E&AD)1-3/2009/Vol-VIII, dated 22-10-2011.

(3) In the case of a post in Basic Pay Scale 17 and above, reserved under the rules to be filled in by initial recruitment, where the appointing authority is satisfied that no suitable officer drawing pay in the basic scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for period of six months or more. Against vacancies occurring for less than six months, current charge

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appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

(6) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis."

(Underlining is ours)

16. Sub rule (2) of the above rule was deleted vide Notification No.SOR-VI(E&AD)1-3/2009/Vol-VIII, dated 22-10-2011. The deleted sub-rule is also reproduced as under:

"((2) So long as a civil servant holds the acting charge appointment, a civil servant junior to him shall not be considered for regular promotion but may be appointed on acting charge basis to a higher post.)"

17. Before deletion of sub rule (2) of the rules, a junior officer to a senior civil servant, so long as he (the senior) holds the acting charge appointment, could not be considered for regular promotion to a higher post. The provisions of Rule 9 of the rules though empowers the Appointing Authority to make appointment of a senior civil servant on acting charge basis but, even after deletion of sub rule (2) of the ibid rules, that will not disentitle a junior officer to be considered for regular promotion to a higher post.

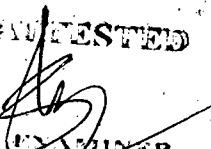
18. Regarding the acting charge appointment, the august Supreme Court of Pakistan has a consistent view that such posts being a stopgap arrangement, could not be a hurdle for promoting the deserving officers on their availability. Reliance in this respect is placed on PLC 2015 (CS) 151 titled "Province of Sindh and others

Versus Ghulam Fareed and others", wherein the august Supreme

Court was pleased to hold as under:

"12. At times officers possessing requisite experience to qualify

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for regular appointment may not be available in a department. However, all such exigencies are taken care of and regulated by statutory rules. In this respect, Rule 8-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, empowers the Competent Authority to appoint a Civil Servant on acting charge and current charge basis. It provides that if a post is required to be filled through promotion and the most senior Civil Servant eligible for promotion does not possess the specific length of service, appointment of eligible officer may be made on acting charge basis after obtaining approval of the appropriate Departmental Promotion Committee/Selection Board. Sub-Rule (4) of the aforementioned Rule 8 further provides that appointment on acting charge basis shall be made for vacancies lasting for more than 6 months and for vacancies likely to last for less than six months. Appointment of an officer of a lower scale on higher post on current charge basis is made as a stop-gap arrangement and should not under any circumstances, last for more than 6 months. This acting charge appointment can neither be construed to be an appointment by promotion on regular basis for any purposes including seniority, nor it confers any vested right for regular appointment. In other words, appointment on current charge basis is purely temporary in nature or stop-gap arrangement, which remains operative for short duration until regular appointment is made against the post. Looking at the scheme of the Sindh Civil Servants Act and Rules framed thereunder, it is crystal clear that there is no scope of appointment of a Civil Servant to a higher grade on OPS basis except resorting to the provisions of Rule 8-A, which provides that in exigencies appointment on acting charge basis can be made, subject to conditions contained in the Rules."

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19. The august Supreme Court of Pakistan in another judgment reported as 2022 SCMR 448 titled "Bashir Ahmed Badini, D&SJ, Dera Allah Yar and others Versus Hon'ble Chairman and Member of Administration Committee and Promotion Committee of hon'ble High Court of Balochistan and others", vis-à-vis the 'stopgap', 'ad hoc' and temporary nature, graciously observed that:

"This stopgap arrangement as a temporary measure for a particular period of time does not by itself confer any right on the incumbent for regular appointment or to hold it for indefinite period but at the same time if it is found that incumbent is qualified to hold the post despite his appointment being in the nature of precarious tenure, he would carry the right to be considered for permanent appointment through the process of selection as the continuation of ad hoc appointment for considerable length of time would create an impression in the mind of the employee that he was being really considered to be retained on regular basis. The ad hoc appointment by its

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very nature is transitory which is made for a particular period and creates no right in favour of incumbent with lapse of time and the appointing authority may in his discretion if necessary, make ad hoc appointments but it is not open for the authority to disregard the rules relating to the filling of vacancies on regular basis in the prescribed manner. In the case of Tariq Aziz-ud-Din and others: (in re: Human Rights Cases Nos. 8340,9504-G, 13936-G, 13635-P and 14306-G to 143309-G of 2009) (2010 SCMR 1301), this Court held that in case where the appointing authority is satisfied that no suitable officer is available to fill the post and it is expedient to fill the same, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the cadre or service as the case may be. It is the duty and obligation of the competent authority to consider the merit of all the eligible candidates while putting them in juxtaposition to isolate the meritorious amongst them. Expression 'merit' includes limitations prescribed under the law. Discretion is to be exercised according to rational reasons which means that; (a) there be finding of primary facts based on good evidence; and (b) decisions about facts be made for reasons which serve the purposes of statute in an intelligible and reasonable manner. Actions which do not meet these threshold requirements are considered arbitrary and misuse of power [Director Food, N.W.F.P v. Messrs Madina Flour and General Mills (Pvt.) Ltd. (PLD 2001 SC 1)."

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20. Similarly, in 2016 SCMR 2125 titled "Secretary to Government of the Punjab, Communication and Works Department, Lahore and others Versus Muhammad Khalid Usmani and others" the august Supreme Court was pleased to have observed as follows:

"15. As is evident from the tabulation given in the earlier part of this judgment, we have also noted with concern that the respondents had served as Executive Engineers for many years: two of them for 21 years each and the two others for 12 years each. The concept of officiating promotion of a civil servant in terms of rule 13 of the Rules is obviously a stopgap arrangement where posts become available in circumstances specified in Rule 13(i) of the Rules and persons eligible for regular promotion are not available. This is why Rule 13(iii) of the Rules provides that an officiating promotion shall not confer any right of promotion on regular basis and shall

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be liable to be terminated as soon as a person becomes available for promotion on regular basis."

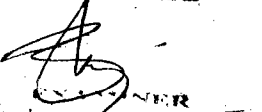
The august Apex Court in paragraphs 20, 21 & 22 ruled as under:

"20. The record produced before us including the working paper produced before the DPC held on 11.08.2008 shows that the sanctioned strength of XENs in the appellant- Department at the relevant time was 151; out of which 112 were working on regular basis and 47 on officiating basis. It is also evident that 39 Executive Engineers' posts were available for regular promotion. This clearly shows that 39 Executive Engineers were working on officiating basis against regular vacancies. We have asked the learned Law Officer to justify such a practice. He has submitted that this modus operandi is adopted by most Government Departments to ensure that corruption and unprofessional conduct is kept under check. We are afraid the justification canvassed before us is not only unsupported by the law or the rules but also lends ample support to the observations made in the Jafar Ali Akhtar's case reproduced above. Further, keeping civil servants on officiating positions for such long periods is clearly violative of the law and the rules. Reference in this regard may usefully be made to Sarwar Ali Khan v. Chief Secretary to Government of Sindh (1994 PLC (CS) 411), Punjab Workers' Welfare Board v. Mehr Din (2007 SCMR 13), Federation of Pakistan v. Amir Zaman Shinwari (2008 SCMR 1138) and Government of Punjab v. Sameena Parveen (2009 SCMR 1).

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21. During hearing of these appeals, we have noted with concern that the device of officiating promotion, ad hoc promotion/appointment or temporary appointment etc. is used by Government Departments to keep civil servants under their influence by hanging the proverbial sword of Damocles over their heads (of promotion 'on officiating basis' liable to reversion). This is a constant source of insecurity, uncertainty and anxiety for the concerned civil servants for motives which are all too obvious. Such practices must be seriously discouraged and stopped in the interest of transparency, certainty and predictability, which are hallmarks of a system of good governance. As observed in Zahid Akhtar v. Government of Punjab (PLD 1995 SC 530) "a tamed subservient bureaucracy can neither be helpful to the Government nor it is expected to inspire public confidence in the administration".

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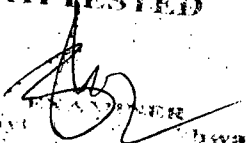


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22. This issue was earlier examined by this Court in *Federation of Pakistan v. Rais Khan* (1993 SCMR 609) and it was held that "it is common knowledge that in spite of institution of ad hoc appointments unfortunately being deeply entrenched in our service structure and the period of ad hoc service in most cases running into several years like the case of the respondent (8 years' ad hoc service in BPS-17), ad hoc appointees are considered to have hardly any rights as opposed to regular appointees though both types of employees may be entrusted with identical responsibilities and discharging similar duties. Ad hoc appointments belong to the family of "officiating", "temporary" and "until further orders" appointments. In *Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan* (PLD 1970 Quetta 115) it was observed that when continuous officiation is not specifically authorized by any law and the Government/competent authority continues to treat the incumbent of a post as officiating, it is only to retain extra disciplinary powers or for other reasons including those of inefficiency and negligence, e.g. failure on the part of the relevant authorities to make the rules in time, that the prefix "officiating" is continued to be used with the appointment and in some case for years together. And in proper cases, therefore, Courts (at that time Service Tribunals had not been set up) are competent to decide whether for practical purposes and for legal consequences such appointments have permanent character and, when it is so found, to give legal effect to it." In *Pakistan Railways v. Zafarullah* (1997 SCMR 1730), this Court observed that, "appointments on current or acting charge basis are contemplated under the instructions as well as the Rules for a short duration as a stop-gap arrangement in cases where the posts are to be filled by initial appointments. Therefore, continuance of such appointees for a number of years on current or acting charge basis is negation of the spirit of instructions and the rules. It is, therefore, desirable that where appointments on current or acting charge basis are necessary in the public interest, such appointments should not continue indefinitely and every effort should be made to fill posts through regular appointments in shortest possible time."

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By way of the stated valuable judgment referred to above, the august Supreme Court maintained the decision of the Punjab Service Tribunal, Lahore, whereby the appeals filed by the

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respondents were allowed and the order, impugned before the Service Tribunal dated 25.08.2008 passed by the Secretary, Communication and Works Department, Government of the Punjab, Lahore, reverting them to their original ranks of Assistant Engineers, was set aside to their extent. As a consequence, all the respondents were deemed to have been promoted as Executive Engineers on regular basis with effect from the respective dates on which they were promoted 'on officiating basis' with all consequential benefits. It was further held that the condition of 'on officiating basis' contained in promotion orders of all the respondents shall stand deleted but it was a case where the persons promoted 'on officiating basis' were duly qualified to be regularly promoted against the promotion posts, therefore, wisdom is derived that in a case, like one in hand, where the persons promoted 'on acting charge basis' did not possess the requisite qualification or other prescribed criteria for promotion, should remain 'on acting charge basis' i.e. that made for stopgap arrangement till their qualifying for their eligibility and suitability for regular promotion or till the availability of the suitable and qualified officers. The officers promoted 'on acting charge basis' could not, unfortunately pass the requisite either grades B&A both examinations or any of the two grades' examination, therefore, they were not found eligible as per the working paper. And as they were 'on acting charge basis' for more than a decade, the

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department seems reluctant to fill the vacancies, (occupied by them 'on acting charge basis') by regular promotion despite availability of suitable and qualified officers.

21. The honourable High Court of Sindh in a case reported as 2019 PLC (CS) 1157 titled "Attaullah Khan Chandio versus Federation of Pakistan through Secretary Establishment and another" observed as under:

"16. Admittedly, the Petitioner was encadared in Police Service of Pakistan on 19.10.2010 and his seniority would be reckoned from that date. We are mindful of the fact that acting charge promotion is virtually a stopgap arrangement, where selection is made pending regular promotion of an officer not available at the relevant time of selection and creates no vested right for promotion against the post held."

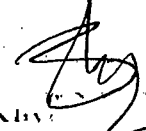
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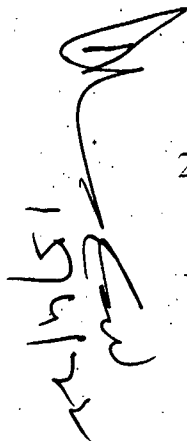
22. Proceeding ahead, Rule 3 of the rules pertains to method of appointment. Sub rule (2) of rule 3 of the rules empowers the department concerned to lay down the method of appointment, qualifications and other conditions applicable to a post in consultation with the Establishment and Administration Department and the Finance Department.

23. While Rule 7 of the rules is regarding appointment by promotion or transfer. Sub rule (3) of rule 7 of the rules states that:

"(3) Persons possessing such qualifications and fulfilling such conditions as laid down for the purpose of promotion or transfer to a post shall be considered by the Departmental Promotion Committee or the Provincial Selection Board for promotion or transfer, as the case may be."

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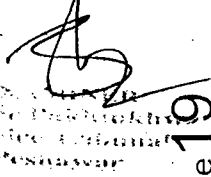
Service Appeal No.7659/2021 titled "Shahid Ali Khan, vs. Government of KP & others", Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others", Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others", Service Appeal No.7662/20201 titled "Javedullah versus Government & others", and Service Appeal No.7663/20201 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalimi Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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This means only the persons possessing the qualifications and fulfilling such conditions as laid down for the purpose of promotion shall be considered for promotion because it does not leave room for the persons, who do not possess such qualification and fulfilling such conditions, to be also considered for such promotion. Vide Notification No.SO(E)/IRR:/23-5/73 dated 17.02.2011, the Irrigation Department of the Khyber Pakhtunkhwa, in consultation with the Establishment & Administration Department and Finance Department, laid down, the method of recruitment, qualification and other conditions specified in columns No.3 to 5 of Appendix (pages 1 to 5) to the above notification, made applicable to the posts in column No.2 of the Appendix. At serial No.4 of the Appendix the post of Assistant Engineer/Sub Divisional Officer/Assistant Director (BPS-17) is mentioned. The qualification for appointment is prescribed to be BE/BSc Degree in Civil/Mechanical Engineering from a recognized University. Sixty-five percent of the posts were to be filled in through initial recruitment. Ten percent by promotion on the basis of seniority cum fitness from amongst the Sub Engineers who acquired, during service, degree in Civil or Mechanical Engineering from a recognized University. Five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineers who joined service as degree holders in Civil/Mechanical Engineering. Vide Notification

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No.SOE/IRRI/23-5/2010-11 dated 25.06.2012, the notification of 2011 was amended. The amendments, relevant to these appeals, are reproduced as under:

Amendments

In the Appendix,

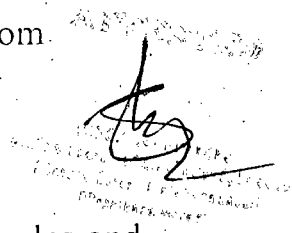
- i. Against serial No.4, in column No.5, for the existing entries, in clause (b), (c) and (d), the following shall be respectively substituted, namely:

(b) twelve percent by promotion, on the basis of seniority cum fitness, from amongst the Sub Engineers, having degree in Civil Engineering or Mechanical Engineering from a recognized University and have passed departmental grade B&A examination with five years' service as such.

Note:- For the purpose of clause (b), a joint seniority list of the Sub Engineers having degree in Civil Engineering or Mechanical Engineering shall be maintained and their seniority is to be reckoned from the date of their appointment as Sub Engineer.

24. The working paper also contained the requirement of the rules and in view of the same, the panel of officers was prepared on proforma-II, which clearly shows that all the appellants were eligible and the officers, who were allegedly holding acting charge


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of the posts, were not eligible. Neither any deficiency of any of the appellants could be pointed out in the replies nor argued before us rather in paragraph 6 of the replies, the eligibility and fitness of the appellants was admitted in unequivocal terms. The only reason which was stated in the replies, the non-availability of the posts because the vacant posts, detailed in the working paper and in the minutes of the DPC, were occupied by the ineligible officers on acting charge basis since 2011 in utter violation of the rules and the method laid down by the department concerned.

25. In a recent judgment reported as 2022 SCMR 448 titled "*Bashir Ahmed Badini, D&SJ, Dera Allah Yar and others Versus Hon'ble Chairman and Member of Administration Committee and Promotion Committee of hon'ble High Court of Balochistan and others*", the august Supreme Court of Pakistan has held as under:

"13. According to Section 8 of the Civil Servants Act, 1973, for proper administration of a service, cadre or post, the appointing authority is required to make out a seniority list of the members, but no vested right is conferred to a particular seniority in such service, cadre or post. The letter of the law further elucidates that seniority in a post, service or cadre to which a civil servant is appointed shall take effect from the date of regular appointment to that post, whereas Section 9 is germane to the promotion which prescribes that a civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post under the rules for departmental promotion in the service or cadre to which he belongs. However, if it is a Selection Post then promotion shall be granted on the basis of selection on merit and if the post is Non-Selection Post then on the basis of seniority-cum-fitness. A quick look and preview of Rule 8-B of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 ('1973 Rules') shows that an Acting Charge Appointment can be made against the posts which are likely to fall vacant for a period of six months or


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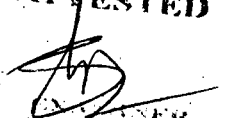
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Service Appeal No.7659/2021 titled "Shahid Ali Khan, vs. Government of KP & others". Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others". Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others". Service Appeal No.7662/20201 titled "Javedullah versus Government & others". and Service Appeal No.7663/20201 titled "Inamullah and Government of KP & others". decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


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more which appointment can be made on the recommendations of Departmental Promotion Committee or the Selection Board. The acting charge appointment does not amount to an appointment by promotion on regular basis for any purpose including seniority and also does not confer any vested right for regular promotion to the post held on acting charge basis. Under Rule 18, the method of making Ad-hoc Appointments is available with the procedure that if any post is required to be filled under the Federal Public Service Commission (Function) Rules, 1978, the appointing authority shall forward a requisition to the Commission immediately. However, in exceptional cases ad-hoc appointment may be made for a period of six months or less with prior clearance of the Commission as provided in Rule 19 wherein if the appointing authority considers it to be in public interest to fill a post falling within the purview of Commission urgently pending nomination of a candidate, it may proceed to fill it on ad-hoc basis for a period of six months. The reading of Balochistan Civil Servants Act, 1974 also reveals that the provisions made under Section 8 are similar to that of Civil Servants Act, 1973. Here also in Section 8, it is clarified that the seniority in the post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post and the criteria for promotion is also laid down with like prerequisites for the selection post and or non-selection post as provided in Civil Servants Act, 1973. So far as ad-hoc and temporary appointments are concerned, Rules 16 to 18 of Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 also enlightened that in case a post is required to be filled through Commission, the Administrative Secretary of the Department shall forward a requisition in the prescribed form to the Commission, however, when an Administrative Department considers it to be in public interest to fill in a post falling within the purview of Commission urgently, it may, pending nomination of a candidate by the Commission, with prior approval of the competent authority, proceed to fill such post on ad-hoc basis for a period not exceeding six months by advertising the same. The Acting Charge appointment is encapsulated under Rule 8 with the rider that appointment on acting charge basis shall neither amount to a promotion on regular basis for any purpose including seniority, nor shall it confer any vested right for regular promotion to the post held on acting charge basis."

15/4/22


ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Service Appeal No.7659/2021 titled "Shahid Ali Khan. vs. Government of KP & others". Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others". Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others". Service Appeal No.7662/2020 titled "Javedullah versus Government & others", and Service Appeal No.7663/2020 titled "Inamullah and Government of KP & others". decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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26. Last but not the least, it seems quite astonishing that, while negating their own stance that there was no vacancy available so that the appellants could be promoted, the respondents, vide Notification No.SO(E)/IRRI:/4-3/DPC/2019/Vol-IX dated 28.03.2022, promoted Engr. Bakhtiar, (only one of the eligible) Graduate Sub-Engineer/Assistant Engineer BS-17 (ACB means acting charge basis); to the post of Assistant Engineer (BS-17) on regular basis. This action of the respondents not only speaks volumes about their malafide but also proves the stance taken by the appellants that they were being discriminated and were not being dealt with equally or in accordance with law.

27. Before parting with the judgment we deemed it appropriate to address a possible question and that is whether the minutes of the meeting of the DPC, deferring the Agenda item-III pertaining to promotion, whereby the appellants were, in a way, ignored from promotion on the pretext discussed hereinabove, could be termed as 'final order' enabling the appellants to file appeal before this Tribunal. In this respect we will refer and derive wisdom from the judgment of the august Supreme Court of Pakistan reported as PLD 1991 SC 226 titled "Dr Sabir Zameer Siddiqui versus Mian Abdul Malik and 4 others". It was found by the honourable Supreme Court that:

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

"5. There is no requirement of law provided anywhere as to how a final order is to be passed in a departmental proceeding. In the present case, not only the representative of the competent authority considered the comments offered in the High Court to be the final

Service Appeal No.7659/2021 titled "Shahid Ali Khan vs. Government of KP & others", Service Appeal No.7660/2021 titled "Rizwan versus Government of KP & others", Service Appeal No.7661/2021 titled "Wajahat Hussain versus Government of KP & others", Service Appeal No.7662/20201 titled "Javedullah versus Government & others", and Service Appeal No.7663/20201 titled "Imamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

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order but the High Court itself acted on such representation thereby inducing the appellant to seek further relief in accordance with law. The appellant could, in the circumstances, approach the Service Tribunal for the relief."

(Underlining is ours)

28. We also refer to the judgment of the honourable High Court of Sindh reported as 2000 PLC CS 206 titled "Mian Muhammad Mohsin Raza versus Miss Riffat Shiekh First Senior Civil Judge and others", wherein the honourable High Court of Sindh, while dealing with the term 'final order' observed as under:

"It would not be out of place to mention that appeals before the Service Tribunals are provided by section 4 of the Sindh Service Tribunals Act, 1973, against any "final order". The term "order" cannot be given any restricted connotation and as held in Muhammad Anis Oureshi v. Secretary Ministry of Communication 1986 PLC (C.S.) 664, the word "order" as used in section 4 of the Service Tribunals Act, 1973, is used in a wider sense to include any communication which adversely affects a civil servant."

(Underlining is ours)

For the foregoing reasons, we hold that the minutes of the meeting of the DPC dated 23.06.2021, deferring the Agenda item No.III relating to promotion would amount to depriving/ignoring the appellants from promotion and is thus a communication adversely affecting them, therefore, it would be considered a 'final order' within the meaning of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

29. In the given circumstances, we allow these appeals and direct the respondents to consider the appellants for promotion against the

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Service Appeal No. 7659/2021 titled "Shahid Ali Khan vs. Government of KP & others", Service Appeal No. 7660/2021 titled "Pirwan versus Government of KP & others", Service Appeal No. 7661/2021 titled "Wajahat Hussain versus Government of KP & others", Service Appeal No. 7662/2021 titled "Javedullah versus Government & others", and Service Appeal No. 7663/2021 titled "Inamullah and Government of KP & others", decided on 15.04.2022 by Division Bench comprising Mr. Kalim Arshad Khan, Chairman and Mrs. Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

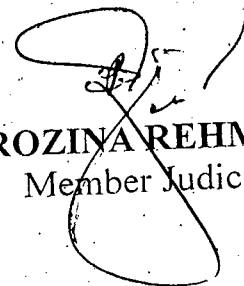
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vacant posts. The DPC shall be held at the earliest possible, but not later than a month of receipt this judgment. Copies of this judgment be placed on all the connected appeal files. Consign.


30. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of April, 2022.

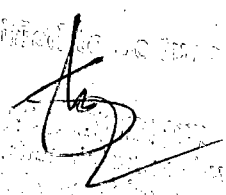

KALIM ARSHAD KHAN
Chairman




ROZINA REHMAN
Member Judicial

(Approved for Reporting)


15/4/22



06/06/22

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07/06/22

07/06/22

Annex "B"

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KHYBER PAKHTUNKWA
SERVICE TRIBUNAL, PESHAWAR

All communications should be
addressed to the Registrar KPK
Service Tribunal and not any
official by name.

Ph:- 091-9212281
Fax:- 091-9213262

No: 981 /ST Dated: 29/4/2022

To

The Secretary Govt. Khyber Pakhtunkhwa,
Irrigation Department, Civil Secretariat,
Peshawar.

[Handwritten signature]
25/4/22

SUBJECT: JUDGMENT IN APPEAL NO.7659/2021 MR.SHAHAB ALI KHAN

I am directed to forward herewith a certified copy of judgment
dated 15.04.2022 passed by this tribunal on the above subject for
compliance please.

Incl: As Above

[Handwritten signature]
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL,
PESHAWAR

وکالت نامہ

بعدالت جناب سروس سٹریٹونل جج صاحب الیٹا

جاہد اللہ خان نام گورنمنٹ

مجانہ Petition دعویٰ اجرم

تھانہ ایف آئی آر تاریخ

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام الیٹا کے لئے

امین الرحمن یوسفزئی ایڈوکیٹ ہائی کورٹ و فیڈرل شریعت کورٹ آف پاکستان،

سجاد احمد محسود ایڈوکیٹ خالد خان مہمند ایڈوکیٹس ہائی کورٹ، پشاور

کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا اگر پیشی پر من مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بڑور تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء کے ڈگری و نظر ثانی اپیل و مگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد وراثت اور رضی نامہ کو فیصلہ بر خلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا منظرہ درخواست حکم استثنائی یا ترقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا کی علیحدہ مختار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جز کی کارروائی کے واسطے یا بصورت اپیل، اقبال کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التوام پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پیروی نہیں تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ مندر ہے مورخہ _____ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

ATTESTED & ACCEPTED:

Amin ur Rehman Yusufza
Advocate High CourtFederal Shariat Court of Pakistan
CNIC: 17301-5813582-3
Cell No. 0321-9022964
BC-10-7562Sajjad Ahmad Mehsud
Advocate High Court
Peshawar&
Khalid Khan Mohmand
Advocate High Court
Peshawar.
BC No. 18-1115Abdul Samad Khan
BC 18-1702

جاہد اللہ خان

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. — **E.P. No. 334** 22

Appeal No. **Javed Ullah Khan** of 20
Appellant/Petitioner

Court of KPN Chief Secy:
Respondent

Court of KPN through Chief Secretary
Respondent No. **1**
Peshawar.

Notice to: —

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... at **8.00 A.M.** If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No..... dated.....

Given under my hand and the seal of this Court, at Peshawar this.....
Day of..... **June** 22 20.....

For Implementation Report

ISSUE BRANCH CHIEF SECRETARY
26-22

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

IN THE DISTRICT COURT OF THE STATE OF KENTUCKY
JUDICIAL DISTRICT NO. 1 (OLD) KENTON COUNTY
COURTHOUSE
CINCINNATI, OHIO

No.

E.P. No. 331

vs

David Miller Nixon

Plaintiff vs Defendant

Plaintiff's Complaint
for Damages

5/18/2003

E.P.

12/15

James

for
Robert

FILED
JAN 15 2004
CLERK OF COURT

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD
PESHAWAR.

No.

Appeal No. E.P. NO. 334 of 2022

Javed ulah Khan Appellant/Petitioner

Versus

Court of KPK Chief Secy Respondent

Respondent No.

Notice to:

Secretary to Court of KPK Irrigation
Deptt: Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 21/6/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

E.P. Copy of appeal is attached. Copy of appeal has already been sent to you vide this

office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 15

Day of June 2022

for implementation
Report

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

[Signature]
Received on 17/6/22
Time 3:00 P.m.

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E.V.

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